



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

REHEARING DECISION

MOP/166638

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 13, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on July 02, 2015, at Milwaukee, Wisconsin. The record was closed on July 30, 2015. On September 22, 2015, a decision was issued by DHA. That decision upheld the agency determination with regard to an overissuance of BC+ benefits for Claim # [REDACTED]. The decision remanded the matter to the agency to rescind Claim # [REDACTED] in the amount of \$1,542.18. On September 25, 2016, the agency requested a rehearing based on a material error in fact and law. On October 20, 2015, the request for a rehearing was granted. No additional hearing was necessary to review the issue presented.

The issue for determination on rehearing is whether the agency presented sufficient evidence at the hearing on July 2, 2012 to demonstrate that it properly calculated an overissuance of BC+ benefits in the amount of \$1,542.18 for the period of April 1, 2013 – February 28, 2014 for the Petitioner's children.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Pang Thao Xiong  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On May 19, 2015, the agency established Claim # [REDACTED] and issued an overpayment notice to the Petitioner informing her that the agency intends to recover and overissuance of BC+ benefits in the amount of \$1,542.18 for benefits issued on behalf of the Petitioner's children for the period of April 1, 2013 – February 28, 2014. The basis for the overissuance was the agency's determination that the Petitioner and the father of her children ([REDACTED]) resided together during the overpayment period but the Petitioner failed to report [REDACTED] as part of the household. The Petitioner timely appealed this determination and a hearing was held on July 2, 2015.
3. On September 22, 2015, DHA issued a decision in which it upheld the agency determination that the Petitioner and the father of her children ([REDACTED]) resided together during the overpayment period. However, the decision remanded the matter to the agency to rescind Claim # [REDACTED] based on a conclusion that the agency had not submitted sufficient evidence to demonstrate that it properly calculated the amount of the overpayment.
4. On September 25, 2015, the agency submitted a request for rehearing for Claim # [REDACTED] based on material error of fact and law.
5. On October 20, 2015, the agency's rehearing request was granted.

### **DISCUSSION**

In its request for a rehearing, the agency argued a material error of fact and law in the decision issued in this case on September 25, 2015. Specifically, the agency alleged error in decision's conclusion that there was insufficient evidence submitted by the agency to demonstrate the amount of the overpayment because no report of benefits paid was submitted during the hearing. The agency asserts that the overpayment is based on the premiums that the Petitioner would have had to pay for her children if [REDACTED] had been included in the household and is not based on benefits paid on behalf of the children.

In reviewing the evidence submitted during the hearing, I conclude the agency is correct that there was a material error of fact and law in the decision issued on September 25, 2015 regarding the calculation of the overpayment. The agency correctly asserts that it presented evidence at the hearing that the overpayment is based on premiums that should have been paid by the Petitioner for her children during the overpayment period. I reviewed the evidence and have determined that the agency properly calculated the overpayment on Claim # [REDACTED] and that it correctly seeks to recover an overissuance of BC+ benefits to the Petitioner in the amount of \$1,542.18 for the period of April 1, 2013 – February 28, 2014. All other findings and conclusions in the decision issued on September 25, 2015 remain intact.

### **CONCLUSIONS OF LAW**

The agency properly calculated an overissuance of BC+ benefits in the amount of \$1,542.18 for the period of April 1, 2013 – February 28, 2014 for the Petitioner's children in Claim # [REDACTED]

**THEREFORE, it is**

### **ORDERED**

The order of remand in the decision issued on September 25, 2015 relating to Claim # [REDACTED] is hereby revised to an order of dismissal of the Petitioner's appeal. The order relating to Claim # [REDACTED] remains unchanged as an order of dismissal.

## REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 30th day of November, 2015

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on November 30, 2015.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability